IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.857 OF 2003

Jalil Mehidiyan ...Petitioner
vs.
1.The State of Maharashtra
2.Hussein Ali Khalool Thafti
(since deceased through
Muhammadali Khalool Thafti ...Respondents

Mr.Raja Thakare for the Petitioner
Mr.P.P.Hudlikar for Respondent No.2

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 27,2005

JUDGMENT:

1. On 20th June 2003 this Court issued notice before admission and granted ad-interim relief. By consent of the learned Counsel for the Parties, the Petition is taken up forthwith for final hearing.

2. The Petitioner is the original accused. A private complaint was filed by one Hussein Ali Khalool Thafti (since deceased) against the Petitioner alleging commission of offences under Sections 465, 467, 471, 420 read with Section 34 of the Indian Penal Code. The learned Magistrate issued process on the said complaint. As the offences were triable by procedure of warrant case, as per the provisions of Section 244 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code), the original complainant was called upon to lead the evidence. After evidence of seven witnesses was led by the complainant, the learned Magistrate

framed charge against the Petitioner and co-accused on 1st July 1996. The said order was challenged by the Petitioner by preferring a Revision Application before the Sessions Court. The said Revision Application was partly allowed and the matter was remanded to the Court of the learned Magistrate with a direction to record the evidence of hand writing expert. The learned Magistrate was directed to consider the question of framing charge thereafter. Accordingly, the complainant examined the hand writing expert before the learned Magistrate. After hearing both the sides, by order dated 12th December 2001, the learned Magistrate discharged the Petitioner by coming to the conclusion that there was no material available to frame charge against the Petitioner. The original complainant preferred a Revision Application to challenge the order passed by the learned Magistrate. By Judgment and Order dated 6th March 2003, which is impugned in this Petition, the learned Additional Sessions Judge allowed the Revision Application by setting aside the order passed by the learned Magistrate. The order of the learned Magistrate discharging the Petitioner was set aside and the learned Magistrate was directed to proceed with the trial against the Petitioner.

3. The case of the original complainant is that his father late Abbas Hussein Ali Akbar and one Jalal Jehun were the partners of one partnership firm by name M/s.Cafe Istambul. It is stated that both of them are Iranian citizens. It is

also stated that the Petitioner is also Iranian citizen who was employed by the said firm as a Cashier/Manager in or about in the year 1976. In the private complaint, the wife of the Petitioner was shown as accused No.2 and the landlady of the building in which the business of the firm was carried out was shown as accused No.3.

4. The case of the complainant is that his father in his capacity as a Partner of the said firm was a monthly tenant in respect of Shop Nos.2,3,4 and 5 on the ground floor of the building Ismail Building at New Nagpada, Mumbai. The business of the firm i.e. Restaurant business was carried out in the said shops as well as in the two rooms forming part of the tenement No.14 on the first floor of the building. The partnership firm used to pay rent to the owner of the building in respect of the shop premises as well as tenement No.14. Both the partners were living in Mumbai for a long time. One of the partners Jalal Jehun left Mumbai prior to the filing of the complaint and did not come back to India till the filing of the complaint. The father of the complainant left India in August 1979 and did not return. The father of the complainant was holding power of attorney of the partner Jalal Jehun. The complainant's father further executed a general power of attorney on 16th August 1979 in favour of the Petitioner by which he was authorised to look after, manage and attend to the business of the firm. The Petitioner used to maintain the accounts of the firm. The Petitioner is the maternal uncle of

the original complainant. The case of the complainant is that the Petitioner used to maintain the accounts of the firm and used to pay net profit earned in the business to the firm. The Petitioner used to pay various amounts to the complainant from time to time on the basis of the accounts maintained by him. However, from the year 1982 the petitioner declined to pay any amount to the firm. When the complainant approached him repeatedly, the Petitioner informed the complainant that the business is no more belonging to the father of the complainant and Jalal Jehun and the Petitioner's wife had become the owner of the business and also the tenant of the premises of the firm. After making enquiry with the Mumbai Municipal Corporation, the complainant learnt that the rent receipt in respect of the premises was transferred in the name of the wife of the Petitioner on the basis of alleged letter of consent signed by the complainant's father Abbas. The declaration signed by the landlady was produced before the Mumbai Municipal Corporation in which she admitted that the said Abbas was the tenant in respect of the shop premises. However, it was stated that as per the consent letter of the said Abbas, tenancy was transferred in the name of the wife of the Petitioner. The complainant found that his father Abbas had never executed or signed any such letter of consent and the said letter was obviously forged and fabricated.

5. The complainant stepped into witness box whose evidence was recorded under Section 244 of the said Code. The

complainant examined P.W.No.2 Arvind Jaganath Tandalkar who was a Clerk in the office of Commissioner of Police and P.W.No.3 Kapildeo Brijlal Pandye, a P.S.I. attached to S.B.II C.I.D. Mumbai. The complainant also examined P.W.No.4 Lakkaraju Sairao who was a P.S.I. attached to Vigilance Branch, C.I.D., Mumbai. The complainant also examined one Suresh Vishnu Joshi as P.W.No.5 who was working as an Officer in Union Bank of India. P.W.No.6 Subhash Digambar Dharurkar was examined by the complainant who was an employee of the Mumbai Municipal Corporation. P.W.No.7 Resurrection Lemos, a Sanitory Inspector of the Mumbai Municipal Corporation was also examined. The complainant relied upon the report of the hand writing expert Jayant Kashiram Aher who was working as Assistant State Examiner of Documents, C.I.D. Maharashtra State, Mumbai and examined him as P.W.No.8.

6. Shri Thakare, learned Counsel for the Petitioner submitted that the report and the evidence of hand writing expert does not help the case of the original complainant. He submitted that the entire case of the complainant revolves around two letters dated 2nd April 1981 allegedly written by the father of the complainant Abbas which according to the complainant are forged. He submitted that the said letters were forwarded to the hand writing expert along with Form No.6 allegedly signed by the said Abbas and nine cheques signed by the said Abbas, for seeking opinion of the hand writing expert as regards the handwriting in letters dated 2nd April 1981. He

submitted that the signatures on Form No.6 and cheques cannot be said to be the admitted signatures of the said Abbas as no one has proved that the signatures on the said so called admitted documents are in the hand writing of the said Abbas. He submitted that as the so-called admitted signatures are not proved to be in the hand writing of the said Abbas, the opinion of the hand writing expert is meaningless. He submitted that as it is not proved that the signature on letters dated 2nd April 1981 are forged by the Petitioner, the learned Magistrate was justified in passing the order of discharge. He pointed out that the original complainant is no more. He submitted that the entire evidence has been recorded before framing of charge and as there is no possibility of the Petitioner being convicted on the basis of the evidence, the learned Sessions Judge ought not to have interfered with well reasoned order passed by the learned Magistrate. Shri Hudlikar, learned Counsel appearing for the Muhammadali Khalool Thafti, the legal representative of the original complainant submitted that there is enough evidence on record apart from the evidence of hand writing expert to show that the signatures on the letters could not be in the hand writing of the said Abbas. He submitted that the cheques bearing signatures of the said Abbas were produced from the custody of the bank and therefore it cannot be said that the signatures on the said cheques were not proved. He submitted that even after framing of charge, the prosecution is entitled to lead further evidence to show that the signatures were admitted

signatures of the deceased Abbas.

6a. I have considered the submissions of the Counsel appearing for the parties. The learned Metropolitan Magistrate had sent the complaint for investigation to the General Branch, State C.I.D. During the investigation, the Officer of C.I.D. collected the forged letters dated 2nd April 1981 allegedly signed by the father of the complainant Abbas. He stated that his father left India for Iran on 17th August 1979 and thereafter never returned to India. He stated that his father died in Iran on 25th December 1982. He stated that on the basis of the said alleged forged letter dated 2nd April 1981, the tenancy was transferred in the name of the wife of the Petitioner and on the basis of second forged letter, the licence of the eating house was transferred from the name of the father of the complainant to the name of the wife of the Petitioner. The complainant relied upon the certified copy of the deposition of the Petitioner in a case filed by the Petitioner. In the said deposition the Petitioner admitted that the father of the complainant died in Iran on 25th December 1982 and prior to his death for a period of three years he was staying in Iran. P.W.No.3 Kapildev stated on the basis of record which was produced before the court that the father of the complainant left India for Iran on 17th August 1979 and thereafter he did not return to India. P.W.No.4 Lakkaraju deposed about the investigation carried out under section 202 of the said Code. He stated that he

obtained alleged forged letters from the son of the landlady. He also obtained original nine cheques issued by the father of the complainant from Union Bank of India, Bombay Samachar Marg Branch, Mumbai and also obtained Form No.6 signed by the father of the complainant regarding income tax returns of the partnership firm. He stated that he forwarded the alleged forged letters along with the cheques and Form No.6 to the Additional Chief State Examiner of documents and obtained a report. P.W.No.5 Suresh Joshi is the Officer of the Union Bank of India. He produced a specimen signature card which was signed by the father of the complainant Abbas. P.W.No.8 Jayant Aher is the expert who examined the alleged forged documents and compared the signature thereon with the signatures on the admitted documents. He produced photographs and negatives of the disputed and the admitted signatures. He stated that the signatures on the disputed documents did not tally with the signatures on the admitted documents.

7. There is material on record to show that the deceased Abbas never returned to India after he left India for Iran on 17th August 1979. The alleged forged letters are of 2nd April 1981 on the basis of which the tenancy and the licence were transferred in the name of the wife of the Petitioner. The letters have been recovered from the custody of the son of the landlady of the building. The cheques which were sent to the hand writing expert were taken from the custody from the bank. The handwriting expert opined that there is a difference

between the signatures appearing on the cheques and the disputed letters. There is a prima facie evidence to show that the letters could not have been signed by the deceased Abbas. It cannot be said that there is mere suspicion against the Petitioner. There is prima facie material available on record to proceed against the Petitioner. Though the complainant may have expired, under Sub Section 6 of Section 246 further evidence can be led by the prosecution.

8. The learned Sessions Judge while reversing the order passed by the learned Magistrate observed that the evidence which is led before the charge coupled with the opinion of the hand writing expert was sufficient to show prima facie involvement of the Petitioner. In my view, there is no error in the impugned order which is passed in exercise of revisional jurisdiction. Hence, no case is made out for interference. Petition is rejected.

9. It is made clear that the observations which are made in this Judgment are for a limited purpose of deciding this Petition.

10. All questions between the parties in the pending complaint are kept open.

JUDGE